

(other than an intangible or intellectual property asset or a tangible asset of nominal value), the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(ii) If a guaranty agency uses the Federal portion of a nonliquid asset for purposes other than the performance of its guaranty activities, the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(2) Payments to the Federal Fund required by paragraph (c)(1) of this section must be made not less frequently than quarterly.

(Authority: 20 U.S.C. 1072-1)

[64 FR 58634, Oct. 29, 1999]

**§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.**

(a) *General.* In accordance with this section, a guaranty agency may request the Secretary's permission to transfer a limited amount of funds from the Federal Fund to the Operating Fund. Upon receiving the Secretary's approval, the agency may transfer the requested funds at any time within 6 months following the date specified by the Secretary. If the Secretary has not approved or disapproved the agency's request within 30 days after receiving it, the agency may transfer the requested funds at any time within the 6-month period beginning on the 31st day after the Secretary received the agency's request. The transferred funds may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Transferring the principal balance of the Federal Fund—(1) Amount that may be transferred.* Upon receiving the Secretary's approval, an agency may transfer an amount up to the equivalent of 180 days of cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments) for normal operating expenses to be deposited into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not

including claim payments), or 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* A guaranty agency that wishes to transfer principal from the Federal Fund must provide the Secretary with a proposed repayment schedule and evidence that it can repay the transfer according to its proposed schedule. The agency must provide the Secretary with the following:

(i) A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment;

(ii) A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency; and

(iii) Certifications by the agency that during the period while the transferred funds are outstanding—

(A) Sufficient funds will remain in the Federal Fund to pay lender claims during the period the transferred funds are outstanding;

(B) The agency will be able to meet the reserve recall requirements of section 422 of the Act;

(C) The agency will be able to meet the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the Act; and

(D) No legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

(c) *Transferring interest earned on the Federal Fund.* (1) *Amount that may be transferred.* The Secretary may permit an agency that owes the Federal Fund the maximum amount allowable under paragraph (b) of this section to transfer the interest income earned on the Federal Fund during the 3-year period following October 7, 1998. The combined amount of transferred interest and the amount of principal transferred under paragraph (b) of this section may exceed 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), but may not exceed 45 percent of the balance in the Federal reserve fund

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that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* To be allowed to transfer the interest income, in addition to the items in paragraph (b)(2) of this section, the agency must demonstrate to the Secretary that the cash flow in the Operating Fund will be negative if the agency is not authorized to transfer the interest, and, by transferring the interest, the agency will substantially improve its financial circumstances.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1072-1)

[64 FR 58635, Oct. 29, 1999]

## § 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.

(a) *General.* A guaranty agency must begin repayment of money transferred from the Federal Fund not later than the start of the 4th year after the agency establishes its Operating Fund. All amounts transferred must be repaid not later than five years after the date the Operating Fund is established.

(b) *Extension for repaying the interest transferred—(1) General.* The Secretary may extend the period for repayment of interest transferred from the Federal Fund from two years to five years if the Secretary determines that the cash flow of the Operating Fund will be negative if the transferred interest had to be repaid earlier or the repayment of the interest would substantially diminish the financial circumstances of the agency.

(2) *Agency eligibility for an extension.* To receive an extension, the agency must demonstrate that it will be able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund and that the agency will be financially sound upon the completion of repayment.

(3) *Repayment of interest earned on transferred funds.* If the Secretary extends the period for repayment of interest transferred from the Federal Fund for a guaranty agency, the agency must repay the amount of interest during the 6th, 7th, and 8th years following the establishment of the Oper-

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ating Fund. In addition to repaying the amount of interest, the guaranty agency must also pay to the Secretary any income earned after the 5th year from the investment of the transferred amount. In determining the amount of income earned on the transferred amount, the Secretary uses the average investment income earned on the agency's Operating Fund.

(c) *Consequences if a guaranty agency fails to repay transfers from the Federal Fund.* If a guaranty agency fails to make a scheduled repayment to the Federal Fund, the agency may not receive any other Federal funds until it becomes current in making all scheduled payments, unless the Secretary waives this restriction.

(Authority: 20 U.S.C. 1072-1)

[64 FR 58635, Oct. 29, 1999]

## § 682.423 Guaranty agency Operating Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain an Operating Fund in an account separate from the Federal Fund. Except for funds that have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency. During periods in which the Operating Fund contains funds transferred from the Federal Fund, the Operating Fund may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Deposits.* The guaranty agency must deposit into the Operating Fund—

(1) Amounts authorized by the Secretary to be transferred from the Federal Fund;

(2) Account maintenance fees;

(3) Loan processing and issuance fees;

(4) Default aversion fees;

(5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;